

# **Civil-law liability arises upon the provision of health services**

## **Abstract**

This diploma thesis aims to analyze in detail the civil-law liability arising out of the provision of health services; special focus is drawn to non-pecuniary damage to health and life of the patient and non-pecuniary damage of the close persons during the provision of health services by the breach of duties of the doctor, including ways and extent of compensation sustained harm. The thesis explains the current legal framework within which civil-law liability for the provision of health services is assessed, with individual references to the previous legal acts (*i.e.* the 1964 Civil Code and the Decree on compensation of non-pecuniary damage). The changes and weaknesses of the current legal framework are pointed out.

The thesis comprises of an introduction, five main chapters and a conclusion. First and second chapters delimitate the issue at hand, introduce elementary terms important for the field [of civil-law liability for the provision of health services], and sources of law and shed light onto the relationship between the two key legal acts governing the provision of health services, that being the Civil Code and the Act on Provision of Health Services. The substance of human life and health as two individual personal rights is also explained, as well as their foundation in genuine (natural) rights and the need and reason to protect them.

Third chapter discusses the very doctor/patient relation, its character and content. Two key responsibilities of the doctor are pointed out, which are the *lege artis* standard and the obligation to obtain a voluntary and informed consent of the patient. The doctor's obligation to act cautiously so that no unreasonable damage occurs (incl. to life and health of the patient), *i.e.* the obligation to prevent the occurrence of damage, is also observed. Last, but not least, the healthcare agreement is presented as an institute which clearly established the doctor/patient relationship as a civil-law one and pioneered as a contractual type to govern the provision of health services.

Finally, the fourth chapter deals contains the core of this thesis, which is the civil-law liability for the provision of health services. The shift in perception of the civil-law liability towards the unity of the primary obligation and the [secondary] obligation to compensate damages is observed. Focal point of this chapter is the analysis of

assumptions which have to be fulfilled to infer the liability of the provider of health services to compensate damages to health and life, which are: (i) illegal conduct, (ii) damages occurred as a result of such conduct and (iii) culpability as a subjective element required in case of breach of statutory or prevention duties. At the end of this chapter, the person who will eventually bear the liability for the breach of specific legal duties and the consequential damage in the provision of health services are discussed.

The last, fifth chapter deals with the non-pecuniary damage caused by health-related injury and death, including individual claims of the damaged patient in the form of damages for suffered pain, loss of amenity and mental suffering. The thesis analyzes especially the extent and the ways of compensation of non-pecuniary damage caused in such ways in the light of the Methodology of Compensation of Non-pecuniary Damage to Health, including the substance of the said methodology and its current role in determination of the amount of compensation for suffered pain and loss of amenity. The non-pecuniary damage (mental suffering) suffered by persons closed to injured patient as a consequence of serious bodily harm or death of the patient and its compensation is also discussed marginally.

**Key words:** civil-law liability, provision of health services, non-pecuniary damage to health, assumptions upon which the civil-law liability for damage to health arise